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TAGS: [ARM](#) [PREL](#) [PGOV](#) [UN](#)  
SUBJECT: GUIDANCE FOR CCW DELEGATION: JULY 7-25

REF: STATE 66793

Classified By: IO Acting A/S Hook, Reason: 1.4(d)

¶1. (SBU) BACKGROUND: The U.S. delegation has participated actively in the first two rounds of negotiations (in January and April) on the issue of cluster munitions in the Group of Governmental Experts (GGE) to the Convention on Certain Convention Weapons (CCW). These two sessions resulted in progress on a section of a new Protocol addressing international humanitarian law (IHL) issues that arise in the context of cluster munitions use, as well as clarifying the issues that need to be addressed in the next round of negotiations, from July 7-25.

#### OBJECTIVES

¶2. (C) The July session will likely be critical in determining whether these negotiations will have a successful outcome. The primary objective for the July session will be to find some middle ground between the group of countries that wants to ban some or all cluster munitions and those who oppose any legally binding provisions banning cluster munitions or requiring technical improvements in cluster munitions. Any outcome on this core issue must be one we can implement consistent with the new DOD policy on cluster munitions. Two other important objectives for the U.S. delegation will be to ensure that the section on IHL remains consistent with existing law (with the exception noted in paragraph 5 below) and to find a way to address victim, assistance, clearance, and international cooperation in a manner that does not undercut or complicate implementation of Protocol V.

#### SPECIFIC GUIDANCE

¶3. (SBU) Definitions. The U.S. delegation should not agree to efforts to define specifically &reliable8 or &accurate8 submunitions or establish a list of &good8 vs. &bad8 submunitions. The U.S. delegation may accept a broad definition of cluster munitions that generally matches the definition the U.S. delegation proposed in January. The U.S. delegation should not accept a definition of cluster munitions or submunitions that excludes those systems that are generally considered to be cluster munitions. The U.S. delegation may agree to exceptions for nuclear, biological, and chemical weapons, as well as for obscurants, pyrotechnics, non-lethal systems (e.g., leaflets), non-explosive kinetic effect submunitions (e.g., flechettes or rods), and electronic effects systems.

¶4. (C) Technical improvements. It is anticipated that many countries that have expressed an intention to sign the Oslo Process treaty text later this year will push to include a ban on some or all cluster munitions in the draft instrument in the CCW. At the same time, Russia, as well as China, India, Pakistan, and others have signaled that they are not willing to join consensus on such a ban and are generally skeptical about legally binding provisions or

technical improvements. The U.S. delegation should not support an explicit ban on cluster munitions. Instead, the U.S. delegation should strive to find common ground between these two groups by promoting an article on technical improvements to cluster munitions that could, for example, focus on the rate of unexploded ordnance produced by cluster munitions. Such an article could be binding or non-binding, so long as it does not impose obligations the USG would not be able to implement under the new DoD policy (ref septel). It should have a transition period of at least 10 years.

¶5. (C) International humanitarian law. The U.S. delegation should seek to finalize an article that sets forth existing IHL as it applies in the context of cluster munitions use. The Friend of the Chair,s paper on IHL from the April negotiations should serve as the basis for further work on this issue. If additional elements of existing IHL are proposed for inclusion in this article (as they were in the chairman,s draft text circulated informally in advance of the session), the U.S. delegation should ensure a common understanding of any such provisions to ensure that there is no confusion among delegations about existing IHL functioning as a de facto ban on cluster munitions. U.S. delegation is authorized, if helpful in the course of the negotiations, to propose an IHL article that goes somewhat beyond existing law along the following lines ) &Those who plan or decide upon an attack shall refrain from using cluster munitions against military objectives where concentrations of civilians are also present unless it is judged, in the circumstances ruling at the time, that the use of such weapons against the military objectives would cause less incidental loss of life to civilians, injury to civilians, damage to civilian objects, or a combination thereof, than the use of alternative weapons.8

¶6. (SBU) Transfers. Israel has proposed text that would prohibit the transfer of cluster munitions to terrorist organizations. In this regard, the U.S. delegation may agree to a text that restricts transfers to states or agencies authorized by states and which prohibits the transfer of cluster munitions to non-state actors. The U.S. delegation may also agree to restrictions on transfers along the same lines as any eventual article on technical improvements so long as a suitable transition period is built into any such provision.

¶7. (SBU) Clearance and international cooperation. The new Protocol should make reference to victim assistance, international cooperation and clearance, but should not create wastefully duplicative structures in these areas. Specifically, the U.S. delegation may accept the incorporation by reference or the repetition of obligations contained in Protocol V to the CCW. These obligations should not substantially exceed or differ substantively from the obligations with respect to ERW more generally contained in that Protocol. They also should not give priority to such activities if cluster munitions are involved, as opposed to other types of munitions. The delegation may accept additional language related to responsibilities of states receiving assistance. The provision of financial assistance must remain voluntary.

¶8. (SBU) Victim assistance. The Chairman,s draft text closely follows a similar article in the Oslo Process document. The United States is a strong supporter of victims, assistance programs and the Delegation should be as flexible as possible in language in a new victims, assistance provision. The language should ensure that any provision of assistance provided to other states is voluntary and connected to strengthening existing international and national structures, in particular national health care systems. The delegation should not accept language that would create new obligations for the United States for which there is no existing legislative authority. In this regard the delegation should take particular care in how provisions would apply to any potential victim within the United States.

## OSLO PROCESS

19. (SBU) The Delegation should make known the U.S. interpretation of Article 21 of the Oslo Process Convention as agreed at the Dublin meeting May 31, 2008 in keeping with the low-key approach set forth in "Guidance on the outcome of the Oslo Process" (ref A). The delegation may also draw from the paper "Assessing/Interpreting Article 21 with Respect to Interoperability" when engaging on this issue. The delegation may discuss with international organizations as well as foreign governments.

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